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January 24, 2003

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: CC Docket Nos. 01-338 and 02-33

Dear Ms. Salas:

On January 23, 2003, Herschel Abbott, Fred McCallum, Jonathan Banks, and I, met with Commissioner Kevin Martin and Dan Gonzalez, Legal Advisor to the Commissioner, to discuss the Triennial Review. The attached documents formed the basis for the presentation.

I am filing this notice in the dockets identified above, as required by Section 1.1206(b)(2) of the Commission's rules, and request that you associate this notice with the record of those proceedings.

Sincerely,

Robert T. Blau /pdf

Attachment

cc: Commissioner Kevin Martin
Dan Gonzalez
William Maher
Jeffrey Carlisle
Rich Lerner
Michelle Carey
Tom Navin

Triennial Review – Key Points and Conclusions

BellSouth Corporation

January 2003

A Reduction in UNE Obligations Would Benefit Consumers

- The over-reliance on UNEs has dampened investment and innovation
- A reduction in UNEs would:
  - Provide additional incentive to invest to both ILECs and facility-based CLECs
  - Provide equipment manufacturers with new orders
  - Provide consumers with real differentiated choices

The Law Provides Strong Support for the FCC's Stated Desire to End UNEs Where There is No Impairment

- The Act directed the Commission to consider impairment
- DC Circuit Court Decision (USTA v. FCC) points to the need to account for specific markets or market categories in the impairment finding
- Further support provided by the CompTel DC Court Decision wherein it upheld the local service use restrictions

Transport and High Capacity Loops

- The Local Service Use Restrictions must be retained in a meaningful way
  - There is no evidence of impairment for traditional special access services
- A simplified Use Restriction could be implemented
  - Any use restriction must be based on a local use test that is not subject to gaming
  - There must continue to be protection for DS1 and above circuits currently being used for access services

Current Safe Harbors Have Proved Successful and Continue To Be Necessary

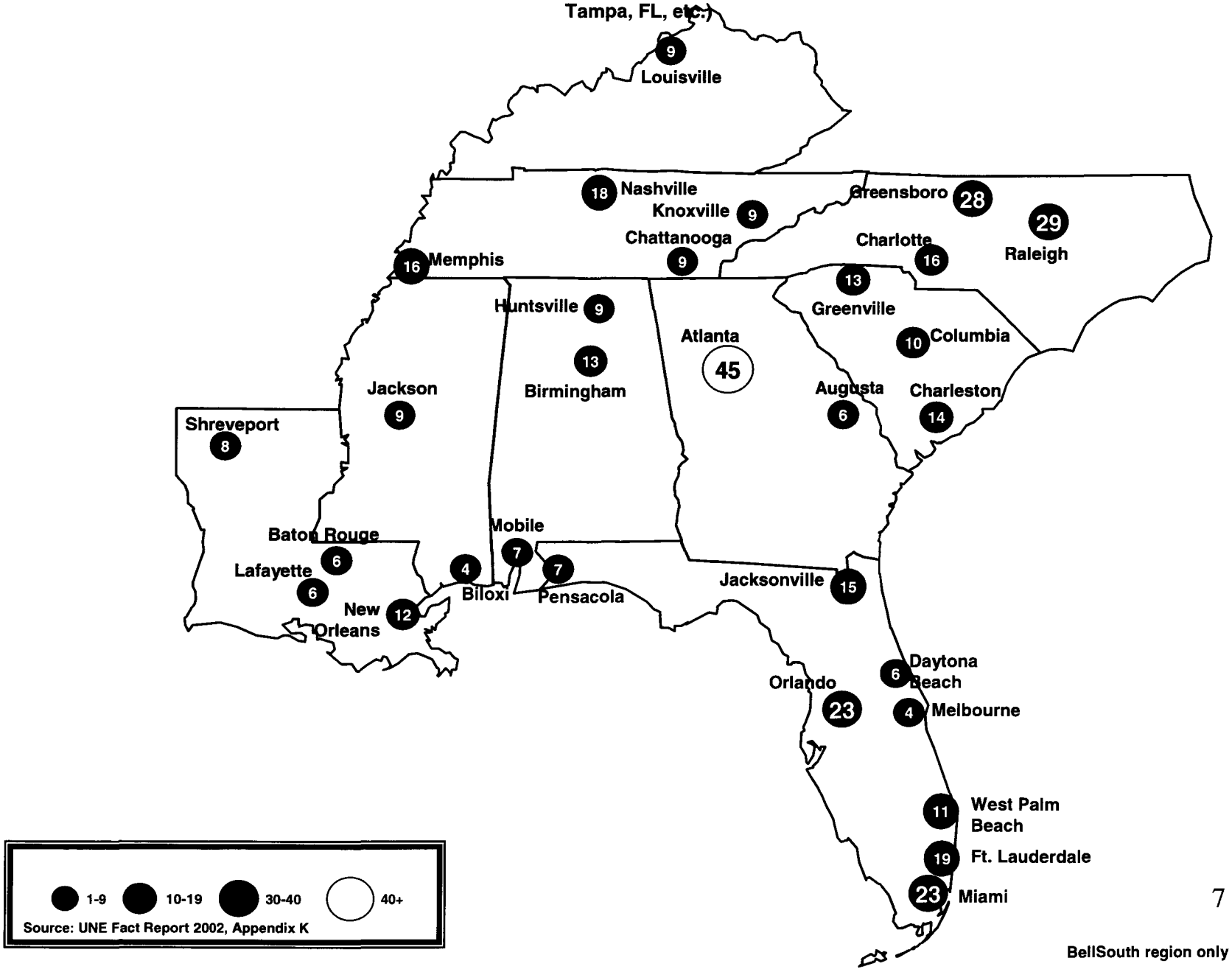
- Impairment finding specific to services that carrier seeks to deliver is a necessary pre-requisite to UNE availability
  - Local
  - Special/dedicated access
  - Bundled local, toll, high-speed data and Internet access
- Current safe harbors
  - Product of industry consensus
  - Experience and legal certainty
    - Exclusive provider or
    - Low and flexible local traffic requirements
  - Adjust as necessary to account for technological change
- Right policy provides incentives for local voice competition
  - Local voice competition means local voice traffic

There Is Considerable Competition for Transport and High Capacity Loops

- 404 Competitive Fiber Networks deployed in BellSouth region
- 1018 fiber based collocation arrangements in BellSouth region
- Phase 2 Pricing Flexibility received throughout much of the BellSouth region:
  - Special access transport: 42 metro areas
  - Chan terms to end-users: 30 metro areas

Operational CLEC Fiber Networks by MSA

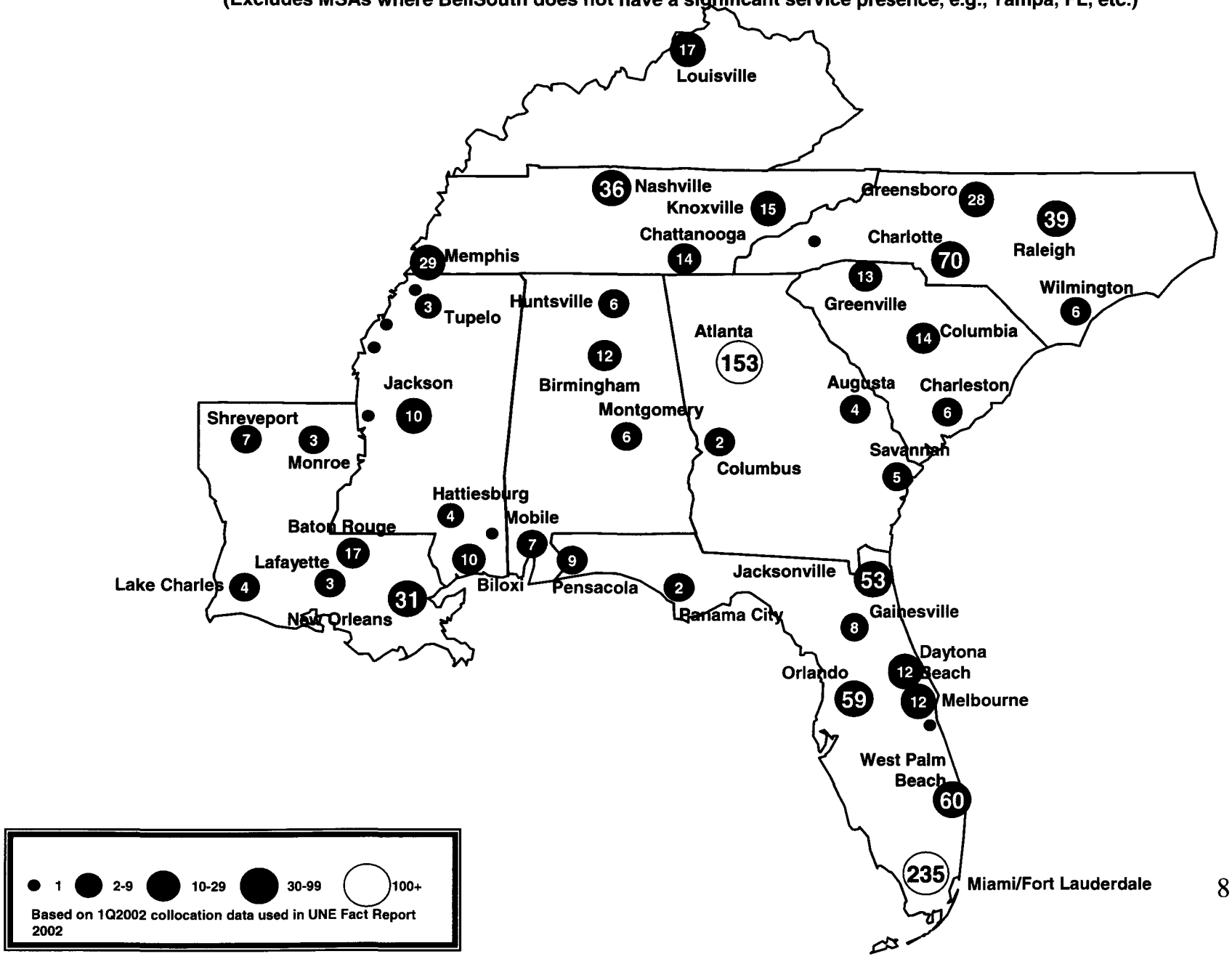
(BellSouth MSAs Ranked in National Top 150, excluding MSAs where BellSouth does not have a significant service presence, e.g., Tampa, FL, etc.)



BellSouth region only

Fiber-Based Collocation by MSA

(Excludes MSAs where BellSouth does not have a significant service presence, e.g., Tampa, FL, etc.)

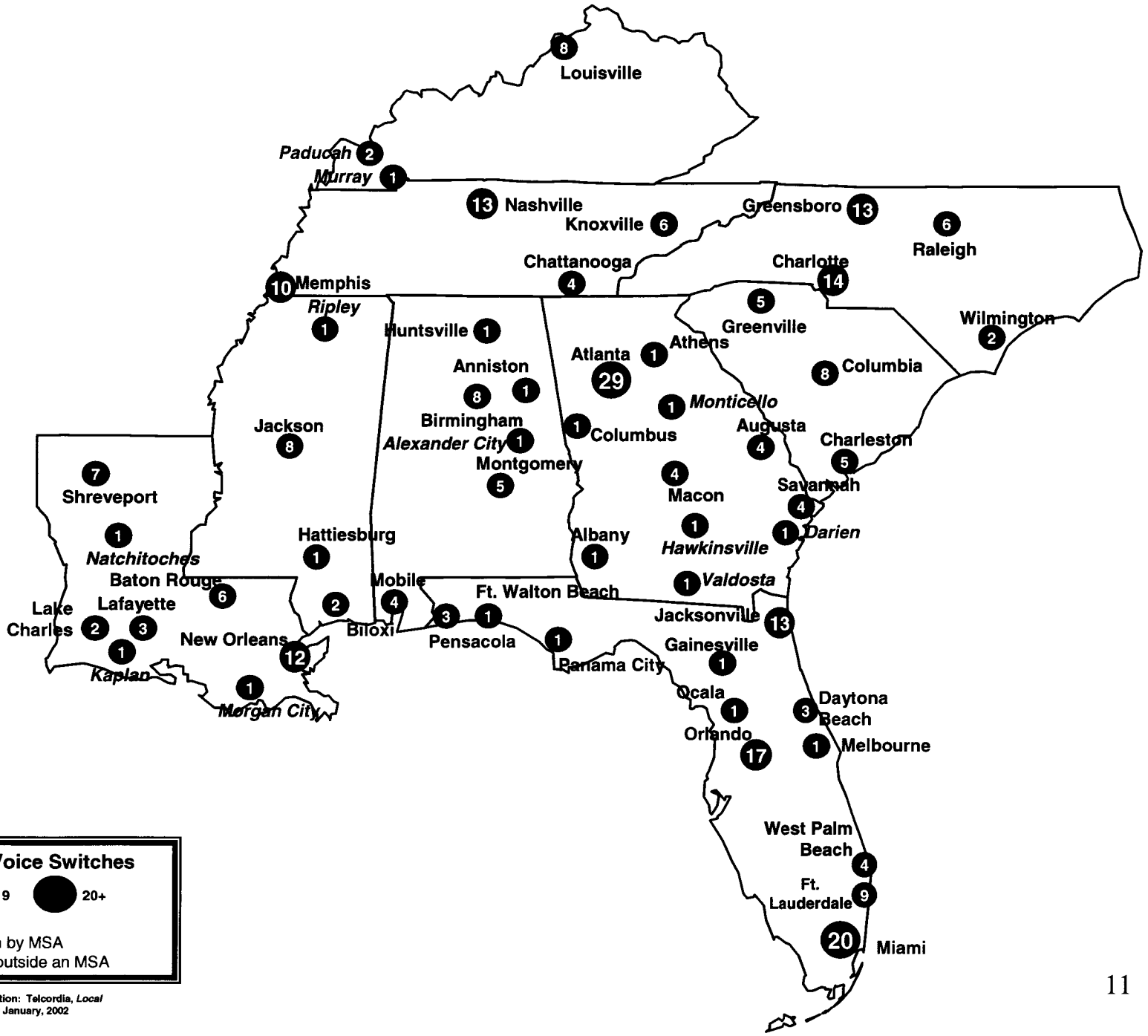


Extensive Relief For Transport and High Capacity Loops is Warranted

- All DS3 and above services should get relief
- The TWTC-BellSouth framework could be used to determine where relief is warranted below DS3 level
- Special access pricing flexibility is premised on extent of competition (as evidenced by fiber-based collocation) and could also be used as a trigger for UNE relief

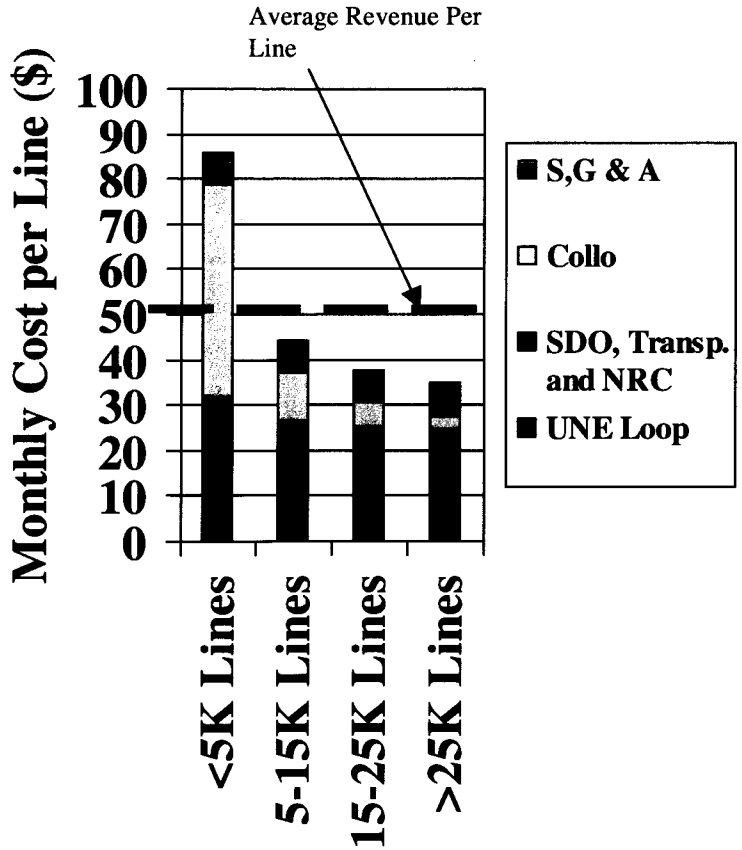
Extensive Switching Relief is Warranted

- 284 competitive voice switches deployed in BellSouth's region.
- CLECs are accessing those competitive switches in COs serving 91% of BellSouth's access lines.



Source for CLEC Switch Information: Telcordia, *Local Exchange Routing Guide (LERG)* January, 2002

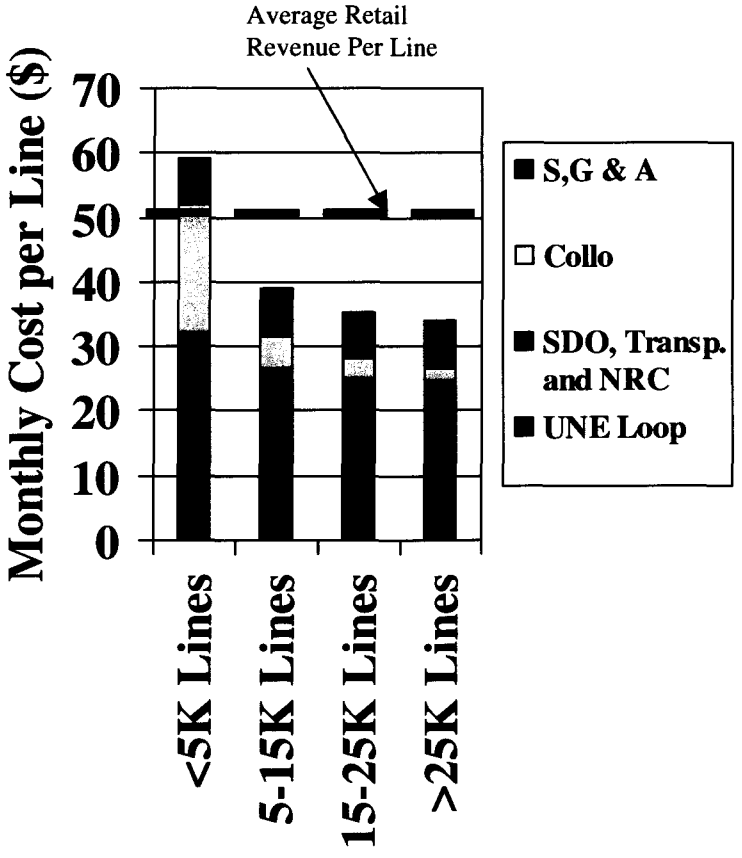
WorldCom's Cost Model Shows That CLECs Are Not Impaired In Serving COs > 5,000 Lines



- WorldCom's 1/08/03 ex parte used as the source for Collocation and "Switching, Digitizing and OSS" (SDO), Transport and Nonrecurring costs
- S,G&A cost taken from FCC Synthesis Model
- UNE Loop rate represents average rate for BST region
- Assumed an average of $50 revenue per line (which correlates with BellSouth actual revenues per line)

Key Point: Without UNE-P, CLECs can profitably serve offices greater than 5000 lines based on WorldCom's own analysis

Correcting for WorldCom's Overstated Collocation Costs Makes the Case for No Impairment Even Stronger



- WorldCom used collocation costs that are totally out of line with current rates
- Replacing WorldCom's overstated collocation costs with current actual collocation rates provides a more accurate picture of the margin available to facility based CLECs
- No changes made to WorldCom's calculation of SDO, transport and NRC costs

Key Point: Correcting for WorldCom's overstated collocation costs makes it even more apparent that CLECs can profitably serve offices greater than 5000 lines

Loop Provisioning Issues Provide No Basis for a Finding of Impairment

- The data show continuing excellent performance on hot cuts:
  - Hot cut on time performance: 99.93%
  - % Provisioning Troubles Within 7 days: 2.3%
- Performance measures put in place by PSCs with CLEC input guarantee continued excellent performance:
  - Broad set of loop provisioning measures and standards
  - Meaningful penalties, e.g.-$400/affected hot in first month increasing to $800/hot cut

BellSouth's Loop Provisioning & Hot Cut Processes are Scaleable

- BellSouth can meet entire shift of current UNE-P demand to UNE loops under today's strict performance standards
  - Current CO Workforce of about 3000
  - 350 CO technicians could handle entire volume of ongoing demand if it shifted to UNE-L
- BellSouth workforce models for projecting staffing needed to meet CLEC volume increases approved in Florida third-party testing
- BellSouth regularly completes projects that require much larger commitments of manual resources

Conclusions: Switching and UNE-P

- The FCC should make a finding of No Impairment for switching (and hence UNE-P) in all areas served by switches >5000 lines (at a minimum)
- Specific competitive triggers should be established for areas served by switches with $\leq$5000 lines
- States should continue key role of monitoring hot cut performance levels

Wireless Carriers Access to UNEs

- There is no evidence of impairment for wireless carriers without access to UNEs
  - Wireless carriers serve over 137 M subscribers today without UNEs
  - Cost alone is not sufficient to show impairment

Broadband UNE Relief is Warranted and Would Stimulate Investment

- Level of future investment in telecom is dependent on no UNE obligations for broadband and advanced services
- DSL Service lags cable modem service in market-share
  - Eliminate UNE line sharing requirement
  - Eliminate any packet switching based UNE requirements

Conclusions

- The FCC has the chance to promote facility based competition and stimulate investment
- Small incremental steps and/or deferral to the states will not provide the direction needed
- The FCC needs to establish firm timelines and triggers for relief
- The Order should be grounded in geographic and type of provider specific impairment analyses to meet the mandates set out by the Act and the Courts

BACKUP

Overview of Analysis Using WorldCom Cost Study

- WorldCom provided a cost study in its ex parte of January 8, 2003. BellSouth used the costs provided by WorldCom in an analysis to see if a CLEC could profitably serve an area given those costs. BellSouth used WorldCom's costs for "Switching, Digitization and OSS" (SDO), Transport and Nonrecurring. BellSouth also used WorldCom's cost for collocation in its first analysis.
- BellSouth used WorldCom's costs from its Case 2 analysis, with a 5% market-share. This was a conservative view, as use of higher market-share assumptions (WorldCom also modeled 7% and 10%) would lower the CLEC's cost per line.
- To the above costs, BellSouth added the cost of an average UNE loop. This cost is based on a weighted average from BellSouth's 9 state operating region. BellSouth then calculated an average revenue per line.‡ Within the BellSouth region, this number was $50.54, which was rounded down to $50.00 for use in this analysis. SBC provides additional documentation to support a $50.00 revenue number in its 1/14/03 ex parte. The difference between cost and retail revenue per line provides the gross margin per line. BellSouth also added in Selling, General and Administrative costs (S,G and A), taken from the FCC's Synthesis Model to arrive at a net margin per line.
- In the second analysis, BellSouth corrected WorldCom's collocation costs to reflect current collocation rates. WorldCom apparently used overstated collocation costs in it original analysis. To correct the collocation costs, BellSouth used actual rates from its Georgia SGAT. Those calculations are shown in detail in the following pages. It should be noted that BellSouth made the conservative assumption that WorldCom would use caged collocation. If rates for cageless collocation were used, the collocation rates would be even lower.

‡ Because WorldCom and other CLECs target high revenue residential end users with bundled products, residential revenues are based on Complete Choice (Complete Choice is BellSouth's residential service offering that includes a bundle of basic service and features) rates, plus access and SLC revenues. Business revenues are based on average revenue per line. The average revenue per line does not include long distance, memory call or inside wire revenues.

Cost and Margin Calculations Using WorldCom's Costs

	5% Market Share																
WorldCom's Case 2: UNE	SDO *	Trans	NRC	Total SDO, Trans & NRC	Collo	UNE Loop	Total CLEC Cost	Avg Retail Local Rev **	Gross Margin	% Gross Margin	SG&A	Net Margin	% Net Margin	COs	Lines	Lines per CO	5% share
Lines >25k	$4.76	$0.85	$2.50	$8.11	$2.89	$16.61	$27.61	$50.00	$22.39	45%	$7.32	$15.07	30%	619	23,647,711	38,203	1,910
25K>Lines>15K	$5.14	$0.99	$2.50	$8.63	$5.16	$16.61	$30.40	$50.00	$19.60	39%	$7.32	$12.28	25%	490	9,604,473	19,601	980
15K>Lines>5K	$6.02	$1.36	$2.50	$9.88	$10.59	$16.61	$37.08	$50.00	$12.92	26%	$7.32	$5.60	11%	1,079	9,756,196	9,042	452
Lines<5K	$10.09	$2.86	$2.50	$15.45	$46.50	$16.61	$78.56	$50.00	-$28.56	-57%	$7.32	-$35.88	-72%	2,155	4,240,193	1,968	98
* Switching, digitization and OSS																	
** Approximation of BellSouth's average retail local revenue. Does not include revenues from long distance, memory call or inside wire. Supported by SBC's 1/14/03 ex parte.																	
	5% Market Share																
WorldCom's Case 2: UNE with corrected collocation costs ***	SDO *	Trans	NRC	Total SDO, Trans & NRC	Corrected Collo	UNE Loop	Total CLEC Cost	Avg Retail Local Rev **	Gross Margin	% Gross Margin	SG&A	Net Margin	% Net Margin	COs	Lines	Lines per CO	5% share
Lines >25k	$4.76	$0.85	$2.50	$8.11	$1.97	$16.61	$26.69	$50.00	$23.31	47%	$7.32	$15.99	32%	619	23,647,711	38,203	1,910
25K>Lines>15K	$5.14	$0.99	$2.50	$8.63	$2.89	$16.61	$28.13	$50.00	$21.87	44%	$7.32	$14.55	29%	490	9,604,473	19,601	980
15K>Lines>5K	$6.02	$1.36	$2.50	$9.88	$5.11	$16.61	$31.60	$50.00	$18.40	37%	$7.32	$11.08	22%	1,079	9,756,196	9,042	452
Lines<5K	$10.09	$2.86	$2.50	$15.45	$19.87	$16.61	$51.93	$50.00	-$1.93	-4%	$7.32	-$9.25	-19%	2,155	4,240,193	1,968	98
* Switching, digitization and OSS																	
** Approximation of BellSouth's average retail local revenue. Does not include revenues from long distance, memory call or inside wire. Supported by SBC's 1/14/03 ex parte.																	
*** Corrected collocation costs based on GA SGAT rates																	

Calculation of Collocation Costs Based on Actual Rates

Collocation					
	Georgia - SGAT				
	NRC	Recurring			
Space Availability Report	$2,148.00	$0.00			
Application Fee per Collo (initial)	$3,850.00	$0.00			
Space preparation - firm order processing	$1,187.00	$0.00			
Space preparation - CO mod per sq ft	$0.00	$2.02			
Space preparation - Common Sys mod per cage	$0.00	$95.23			
Cable records, per request	$1,706.00	$0.00			
Cable Installation, per cable	$2,750.00	$0.00			
Cable support structure, per entrance cable	$0.00	$13.35			
Floor Space per sq ft	$0.00	$7.50			
Power, per Fused Amp	$0.00	$8.06			
Welded Wire Cage - First 100 sq ft	$0.00	$161.27			
Welded Wire Cage - Each additional 50 sq ft	$0.00	$15.82			
Security System per sq ft	$0.00	$0.0172			
Security Access System per card	$46.20	$0.0607			
Collocation Build-out	$16,281.80				
Monthly Recurring Charges		$1,720.76			
Assumptions:					
Amps used		60			
Square Feet		100			
Security Cards		4			
Requests for Cable Records		2			
Cable Support Structures		2			
Nonrecurring Charge per 2-Wire Cross Connect	$12.60				
Monthly Recurring Charge per 2-Wire Cross Connect		$0.30			
Case 2: UNEs and 5% market share	Avg Lines in CO per MCI	5% share of avg lines in CO			
Lines>25k	38,203	1,910			
25k>Lines>15k	19,601	980			
15k>Lines>5k	9,042	452			
Lines<5k	1,968	98			
Case 2: UNEs and 5% market share	Collo NRC per line *	Collo Recurring per line	2-W cross connect NRC per line **	2-W cross connect Recurring per line	**Collo Total per line**
Lines>25k	$0.07	$0.90	$0.70	$0.30	**$1.97**
25k>Lines>15k	$0.14	$1.76	$0.70	$0.30	**$2.89**
15k>Lines>5k	$0.30	$3.81	$0.70	$0.30	**$5.11**
Lines<5k	$1.38	$17.49	$0.70	$0.30	**$19.87**
* Collocation Build-out costs amortized over 10 years and divided by 5% share of lines in CO					
** 2-W Cross Connect NRC amortized over 18 months customer life					